IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.124 OF 2005

IN

CIVIL APPLICATION NO.2259 OF 2002

IN

WRIT PETITION NO.4637 OF 1986

Ganesh Vasudeo Parab
since deceased by his legal heirs
& Ors. ...Petitioners

Versus

Vyankatrao Subhanrao Patankar
Since deceased, by his heirs ...Respondents

.....

Mr.G.R.Rege with Mr.S.M.Railkar for Review Petitioners.

Mr.S.G.Karandikar for Respondents 5 & 6.

.....

CORAM: A.M.KHANWILKAR, J.

OCTOBER 18, 2005.

P.C.

1. Heard Counsel for the parties.

2. By this Review Petition, Petitioners seek review of order dated 10th December 2002 passed in

Civil Application No.2259 of 2002 and order dated 6th July 2004 passed in Writ Petition No.4637 of 1986 along with Civil Application No.1083 of 2003.

3. The only ground on which the Petitioners herein have approached this Court is because of the observations made by the Apex Court in its order dated 4th April 2005 in S.L.P. (Civil) No.CC 693 of 2005, which Petition was directed against Judgment and Order dated 6th July 2004 in Writ Petition No.4637 of 1986 and order dated 10th December 2002 in Civil Application No.2259 of 2002 in Writ Petition No.4637 of 1986. The order passed by the Supreme Court reads thus:

> "Call this matter after three weeks, as it is stated by learned counsel for the Petitioners that by a review application, the order dated 22.11.2000 passed by this Court in SLP(C) No.18685 of 2000 shall be brought to notice of the High Court".

. It is obvious that this order was passed on the statement made by the Counsel for the Petitioners that the Petitioners intend to file review application in this court against the aforesaid two orders. According to the

Petitioners, as the first order passed in Writ Petition No.4637 of 1986 on 22nd June 2000 became final with the dismissal of Special Leave Petition (Civil) No.18685 of 2000 on 22nd November 2000, which Petition was filed in the Supreme Court by the heirs and legal representatives of deceased Venkatrao Subhanrao Patankar, it was not open for this Court to entertain the Civil Application No.2259 of 2002 at the instance of Respondents 5 and 6 herein. This submission will have to be rejected in view of the exposition of the Apex Court in the case of **Kunhayammed & Ors. vs. State of Kerala & Anr. reported in (2000) 6 SCC 359.** In Para 40 of the said decision, the Apex Court has clearly observed that rejection of S.L.P. by non-speaking order in one word "dismissed" will not preclude the High Court to exercise review jurisdiction conferred by Order 47 Rule 1 of the Code of Civil Procedure or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court. In the present case also, the S.L.P. filed by the present Respondent Nos.1 to 4 being S.L.P. (Civil) No.18685 of 2000 has been summarily

rejected by the following order :

"The S.L.P. is dismissed."

4. Viewed in this perspective, the exposition in Para 40 of the above said decision of the Supreme Court applies with full force to the case on hand. Counsel for Respondents 5 and 6 have also relied on another decision of the Apex Court in the case of **U.P.State Road Transport Corporation vs. Omaditya Verma & Ors. reported in (2005) 4 SCC 424**, which has re-iterated the legal position stated in the earlier decision of the Supreme Court referred to above.

5. In the circumstances, there is no substance in the argument that on account of dismissal of S.L.P. on 22nd November 2000 by the Apex Court, the order passed by this Court on 22nd June 2000 in Writ Petition No.4637 of 1986 became final and could not have been reviewed or recalled by this Court at the instance of Respondents 5 and 6 in the Application filed being Civil Application No.2259 of 2002. I have already recorded reasons for allowing the said Application being Civil

Application No.2259 of 2002 in my order dated 10th December 2002.

6. Counsel for the Petitioners, however, contends that the aforesaid reported decisions are of no avail in the fact situation of the present case. This is so because in the present case, the Apex Court has granted liberty to the Petitioners to file Review Application before this Court in terms of order dated 4th April 2005. Indeed, the order records that statement was made by the Counsel for the Petitioners that Review Application will be filed before this Court pointing out order dated 22nd November 2000 passed in S.L.P. As mentioned earlier, rejection of S.L.P. on 22nd November 2000 did not preclude this Court from exercising review jurisdiction, which request was made in Civil Application No.2259 of 2002, for the reasons already recorded in the order passed by this Court on 10th December 2002. Besides, I find substance in the argument of the Respondents that in fact, it is not open to the Applicants/Petitioners to maintain the present

Review Petition, having participated in the hearing of said Civil Application and later on at the hearing of the Writ Petition without any demur, which was disposed of on July 6, 2004.

7. Be that as it may, as this is the only argument canvassed before me, the present Petition should fail. The same is rejected.

8. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.